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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. **E/1686/2009 – SM [BR]** Date **13/04/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S HINDUSTAN ZINC LTD.
"YASHAD BHAWAN",
UDAIPUR 313001 (RAJ.)

M/S HINDUSTAN ZINC LTD. Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No. 180 / 2011 –SM[BR]** dated 24.3.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult SHRI V.LAKSHMIKUMARAN ADV.
B-6/10, SAFDARJUNG ENCLAVE NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:24.03.2011
Date of decision:24.03.2011

Excise Appeal No. 1686 of 2009-SM (BR)

[Arising out of Order-in-Appeal No.207(DK)CE/JPR-II/2009 dated 20.03.2009 passed by the Commissioner of Central Excise (Appeals)-II, Jaipur].

M/s. Hindustan Zinc Limited — Appellant

Vs.

CCE, ~~Rajasthan~~ Jaipur-II — Respondent

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether Their Lordships wish to see the fair copy of the Order?

4. Whether Order is to be circulated to the Departmental authorities?

Appearance: Rep. by Shri Hemant Bajaj, Advocate for the appellants.
Rep. by Ms. Rimjhim Prasad, DR for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final

Order No. 180/2011 SM (BR) /Dated:24.03.2011

Per Rakesh Kumar

This is an appeal against the Order-in-Appeal No.207(DK)CE/JPR-II/2009 dated 20.03.2009 passed by the Commissioner of Central Excise (Appeals), Jaipur-II upholding the order-in-original dated 30.07.2008 passed by the Asstt. Commissioner by which the Asstt. Commissioner disallowed the Cenvat credit amounting to Rs.26,614/- in respect of the services received in respect of the guest house of the company.

2. Heard both sides.

3. Shri Hemant Bajaj, Advocate, ld. Counsel for the appellant, pleaded that the only point of dispute in this case is as to whether the services received in respect of the guest house of the appellant located in their residential colony are covered by the definition of 'input-service' or not, that the guest house of the company had received the services of cable T.V. and repair & maintenance etc., that the services received by the guest house are covered by the definition of input service, that in this regard, he relies upon the judgment of the Tribunal in case of **CCE Vs. Hindustan Zinc Ltd. Reported in 2009 (16) STR 704**, wherein the Tribunal held that the services relating to repair and maintenance of the guest house of the company are covered by the term "input services", that when in respect of the same appellant for the previous period this issue has been decided in their favour in the case of same appellant, different view cannot be taken for a similar issue for subsequent period, and in this regard, he also relies upon the

judgement of the Tribunal in the case of **Prism Cement Ltd. Vs. CCE, Bhopal reported in 2009 (243) ELT 231 (Tribunal-Delhi)** and that in view of this, the impugned order disallowing the Cenvat Credit in respect of the services received by the company's guest house is not correct.

4. Ms. Rimjhim Prasad, ld. SDR, defending the impugned order pleaded that the services received in respect of the company's guest house have no nexus with the manufacture of the goods and hence, cannot be called input services, that in this regard she relies upon the Bombay High Court's judgement in the case of **CCE, Nagpur Vs. Manikgarh Cement reported in 2010 (20) STR 456 (Bombay)**, wherein it was held that the services of repair and maintenance and civil construction used in the residential colony of the appellant may be the activities relating to welfare of the employees but the same cannot be called the activities having nexus with the manufacture of business and as such, cannot be covered by the definition of input services, that as the same view has been taken by the Advance Ruling Authority in its judgement reported in **2008 (232) ELT 169 (A.A.R.)** in the case of **VMT Spinning Co. Ltd.** wherein it was held that the provisions of building houses, schools, recreation, etc. for workers is welfare measure, but the same has no nexus with manufacture, storage or sale of the goods and that in view of this, there is no merit in this appeal.

5. I have carefully considered the submissions from both the sides and perused the records. The only point of dispute is as to whether the services

received in respect of the appellant's guest house are covered by the definition of "input services" or not. The services which have been received in respect of the guest house are Cable T.V. services and repair & maintenance, etc. which, in my view, have no nexus with the manufacture of the finished goods of the appellant. Moreover, Hon'ble Bombay High Court in the case of **Manikgarh Cement** (supra) has held that the services of repair and maintenance and civil construction used in residential colony of the appellant are not covered by the definition of input services as construction of the residential colony and its repair and maintenance is a welfare activity which has no nexus with the manufacturing activities. In my view, the ratio of the judgment of the Hon'ble Bombay High Court in the case of **Manikgarh Cement** (supra) is squarely applicable to this case as maintenance of the guest house for the guests of the company is similar to the construction and maintenance of the residential colony of the employees of the factory. In view of this, I hold that there is no infirmity in the impugned order. The appeal is dismissed.

(Rakesh Kumar)
Member (Technical)

Ckp.